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Auto Auction of Montana

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

In re:

INCREDIBLE AUTO SALES, LLC,

Debtor.

CASE NO. 06-60855

**OBJECTION TO DEBTOR'S REQUEST
FOR SURCHARGE**

NOTICE OF HEARING

Date: March 20, 2007

Time: 9:00 a.m.

**Location: 5th Floor, Fed.Bldg.
Billings, Montana**

AUTO AUCTION ASSOCIATES OF MONTANA, INC., d/b/a AUTO AUCTION OF MONTANA a/k/a AUTO AUCTION OF BILLINGS ("Auto Auction"), through its counsel, submits the following Objection to Debtor's Request for Surcharge.

The Debtor has requested that this Court surcharge Auto

Auction for repairs allegedly done to a Sorrento. The Court should deny the request because: the Debtor waived all claims in that a judgment was entered against it in a separate adversary proceeding which determined the Debtor had no interest in the "vehicles or proceeds" of the vehicles, which judgment is also *res judicata* on this matter and which also bars this claim under collateral estoppel; 11 U.S.C. § 506(c) only applies to "secured claims," and a reclamation claim is not a "secured claim"; the Debtor has waived and is barred by judicial estoppel from making this claim as it has always asserted that the auction claimants were unsecured and there is no provision for surcharge to an unsecured claim; the Court has not yet ruled on the reclamation claim, so the request is clearly premature; and, the request has been made without explaining or providing any factual basis for the claim.

WHEREFORE, Auto Auction respectfully requests that the Court issue an order which:

1. Denies the Debtor's request for a surcharge; and
2. Grants such other and further relief as the Court deems just and proper.

DATED this 5th day of March, 2007.

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By: /S/ Bruce F. Fain

Bruce F. Fain

Attorneys for Plaintiff Auto
Auction of Montana

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on this 5th day of March, 2007, a copy of the **OBJECTION TO DEBTOR'S REQUEST FOR SURCHARGE AND NOTICE OF HEARING** was served upon counsel of record by the following method:

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